

Please note that this is an unofficial version of the notice of adoption. The official version of the notice of adoption may be found in the *New Jersey Register* at 38 N.J.R. 3896(a).

HEALTH AND SENIOR SERVICES

SENIOR SERVICES AND HEALTH SYSTEMS BRANCH

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

STANDARDS FOR LICENSURE OF ASSISTED LIVING RESIDENCES, COMPREHENSIVE PERSONAL CARE HOMES AND ASSISTED LIVING PROGRAMS

STANDARDS FOR LICENSURE OF LONG-TERM CARE FACILITIES

NOTIFICATION OF RESIDENT DEATHS BY HEALTH CARE FACILITIES TO FAMILY MEMBERS

**Adopted Amendments: N.J.A.C. 8:36-4.6, 13.7 and 18.8;
N.J.A.C. 8:39-13.1 and 27.4**

Proposed: November 7, 2005 at 37 N.J.R. 4150(a)

Adopted August 1, 2006 by Fred M. Jacobs, M.D., J.D., Commissioner,
Department of Health and Senior Services (with the approval of the
Health Care Administration Board).

Filed: August 18, 2006 as R. 2006 d. 331, **with substantive and
technical changes** not requiring additional public notice and
comment (See N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 26:2H-1 *et seq.*; N.J.S.A. 26:2H-5e.

Effective Date: September 18, 2006.

Expiration Dates: November 15, 2006, N.J.A.C. 8:36
February 16, 2007, N.J.A.C. 8:39

Summary of Public Comments and Agency Responses:

The public comment period ended January 6, 2006. The
Department of Health and Senior Services (Department) received
comments from the following individual:

Diana L. Bowen, Esq., Director, Legal and Government Affairs,
Health Care Association of New Jersey, Hamilton, NJ

1. COMMENT: Since residents in a nursing home or assisted living
residence may not be monitored on a round-the-clock basis, a resident's
death that occurs overnight may not be detected until the morning hours.
In these circumstances, it would be reasonable to require timely

notification upon the "determination or pronouncement of the death of the resident," instead of at the time of the occurrence.

RESPONSE: The Department did not intend that the clock requiring notification of the death of a resident that is required by N.J.A.C. 8:36-13.7(a)1 and N.J.A.C. 8:39-13.1(e) to occur within one-hour of the occurrence to start at the time the resident actually expired. The Department's intended interpretation of "occurrence" in the phrase "at the time of the occurrence" was the time the facility determined that the resident was deceased, not the actual time of the resident's death. Upon review, the Department agrees with the commenter that additional clarification is necessary. Therefore, the Department will change N.J.A.C. 8:36-13.7 and 8:39-13.1 and 27.4 upon adoption to indicate that the pronouncement rather than the occurrence, of the resident's death is the event that starts the clock on the facility's requirement to notify a resident's family member, guardian or other designated person of the death of the resident. This change provides additional guidance to facilities as to the time within which a facility has to notify a resident's family member, guardian or other designated person of the resident's death.

2. COMMENT: The commenter states that the proposed regulation does not permit any discretion when a resident's designated contact, who may themselves be elderly, does not wish to be disturbed in the middle of the night with traumatic news concerning the death of their loved one. The commenter suggests that the regulations permit some flexibility for the facility to make a delayed notification, if so requested by the appropriate contact.

RESPONSE: The Department agrees with the commenter and will be amending N.J.A.C. 8:36-13.7 and 8:39-13.1 upon adoption to permit health care facilities to obtain instructions from the party designated to receive notification of the resident's death as to when the notification required by the rules can occur outside of the one-hour time frame. The Department believes that this change satisfies the intent of the enabling statute, N.J.S.A. 26:2H-5e, as it continues to require prompt notification to a resident's family member, guardian or other designated person as the party receiving the notification is the one making the decision as to the hours they wish to be excluded from such notification. While the change creates a recordkeeping and compliance requirement, as a facility would be required to maintain written instructions from the resident's family member, guardian or other designated person as to when the required notification shall occur outside of the one hour window imposed by the rules, any expense in doing so is negligible as a facility is already required to record the name and contact telephone number of the resident's family member, guardian or other designated person and any instructions as to when the required contact shall be made may be recorded on the same paper and at the time such information is received.

Federal Standards Statement

The adopted amendments to N.J.A.C. 8:36 are not subject to any Federal standards or requirements. The Federal regulations governing nursing homes, which would impact upon the proposed amendments to N.J.A.C. 8:39, do not encompass notification of family members or relatives of a resident upon the resident's death. Therefore, a Federal Standards Analysis is not required.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated with brackets with asterisks *[thus]*):

CHAPTER 36 STANDARDS FOR LICENSURE OF ASSISTED LIVING RESIDENCES, COMPREHENSIVE PERSONAL CARE HOMES AND ASSISTED LIVING PROGRAMS

SUBCHAPTER 4. GENERAL REQUIREMENTS

8:36-4.6 Policy and procedure manual

(a) A policy and procedure manual(s) for the organization and operation of the facility or program shall be developed, implemented, and reviewed at intervals specified in the manual(s). Each review of the manual(s) shall be documented, and the manual(s) shall be available in the facility or program to representatives of the Department at all times. The manual(s) shall include at least the following:

1. – 5. (No change.)

6. Policies and procedures for the maintenance of personnel records for each employee, including at least his or her name, previous employment, educational background, credentials, license number with effective date and date of expiration (if applicable), certification (if applicable), verification of credentials, prior criminal records, records of orientation and inservice education, and evaluation of job performance; [and]

7. Policies and procedures, including content and frequency, for physical examinations and immunizations and tuberculin testing upon employment and subsequently for employees and persons providing direct resident care services in the facility through contractual arrangements or written agreement; and

8. Policies and procedures delineating the responsibilities of the facility's staff in making prompt notification regarding the death of a resident as required by N.J.S.A. 26:2H-5e and N.J.A.C. 8:36-13.7(a).

(b) (No change.)

SUBCHAPTER 13. RESIDENT RECORDS

8:36-13.7 Record of death

(a) Whenever a resident dies in the assisted living residence, the administrator or the administrator's designee shall:

1. Promptly notify a family member, guardian or other designated person of the death of the resident.

i. Notification shall be made at the time of the *[occurrence]* ***pronouncement of the resident's death***, and the time between ***pronouncement of the*** resident's death and notification shall not exceed one hour ***unless the family member, guardian or other designated person to be contacted provided other instructions as to when the required notification shall occur.**

ii. **The facility shall enter any alternate instructions in the resident's record alongside the contact information***; and

2. Include in the resident's record written documentation from the physician of the date and time of death, the name of the person who pronounced the death, disposition of the body, and a record of notification of the family. The administrator or administrator's designee shall include in the record of notification of the family confirmation and written documentation of that notification.

(b) A physician, registered nurse or paramedic may make a determination and pronouncement of death in accordance with N.J.A.C. 13:35-6.2(d) and (e).

SUBCHAPTER 18. ASSISTED LIVING PROGRAMS

8:36-18.8 Notification requirements

(a) (No change.)

(b) Notification of any occurrence noted in (a) above shall be documented in the resident's record. The documentation with regard to an occurrence noted in (a)4 above shall include confirmation and written documentation of that notification.

CHAPTER 39

STANDARDS FOR LICENSURE OF LONG-TERM CARE FACILITIES

8:39-13.1 Mandatory communication policies and procedures

(a) – (d) (No change.)

(e) The facility shall promptly notify a family member, guardian or other designated person about a resident's death.

1. Notification shall be made at the time of the *[occurrence]* ***pronouncement of the resident's death***, and the time between the ***pronouncement of the*** resident's death and notification shall not exceed one hour ***unless the family member, guardian or other designated person to be contacted provided other instructions as to when the required notification is to occur.**

2. The facility shall enter any alternate instructions in the resident's record alongside the contact information*.

3. The facility shall maintain confirmation and written documentation of that notification.

4. The facility shall adopt and maintain in its manual of policies and procedures a delineation of the responsibilities of the facility's staff in making such prompt notification regarding the death of a resident as required by this paragraph.

8:39-27.4 Mandatory post-mortem policies and procedures

(a) (No change.)

(b) The next of kin, guardian, or other designated person shall be promptly notified at the time of the *[resident's death]* ***pronouncement of the*** resident's death.

1. The facility shall maintain in the resident's medical record confirmation and written documentation of that notice.

(c) – (f) (No change.)